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# SUPREME COURT OF THE UNITED STATES

RICHARD P. LUCAS *v.* NEW YORK

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUDICIAL DEPARTMENT

No. 85-5116. Decided October 15, 1985

The petition for writ of certiorari is denied.

JUSTICE WHITE, dissenting.

The issue presented in this case is whether the prohibition established in *New Jersey* v. *Portash*, 440 U. S. 450 (1979), against using a statement obtained from a criminal defendant in violation of his Fifth Amendment right against self-incrimination for impeachment purposes applies equally to statements taken in violation on the Sixth Amendment right to counsel. The United States Court of Appeals for the Second Circuit, in *United States* v. *Brown*, 699 F. 2d 585 (CA2 1983) and the Tenth Circuit, in *United States* v. *McManamon*, 606 F. 2d 919 (CA10 1979) (pre-*Portash*) have answered this question in the affirmative. The Appellate Division of the Supreme Court of New York in the present case, and the New York Court of Appeals in *New York* v. *Ricco*, 56 N. Y. 2d 320, 437 N. E. 2d 1097 (1982), however, have given the opposite answer. I would grant certiorari to resolve this conflict.

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